CRP 187/2006
BEFORE
HON'BLE MR JUSTICE RANJAN GOGOI

JUDGMENT AND ORDER (ORAL)

This application U/s 115 of the CPC is at the instance of the defendants who seek to challenge the appellate judgment and decree of reversal dated 27-6-06 passed in Title Appeal No.19/05.

2. The facts, be brief, may be noticed. The opposite party herein as the plaintiff instituted a suit being Title Suit No.279/99 seeking eviction of the defendants from the suit premises on the ground that the said defendant was defaulter in the payment of monthly rent and also on the ground that the suit premise is bona fide required by the plaintiff landlord for her use and occupation. According to the plaintiff she is the absolute owner of the suit house covered by Municipal Holding No.92 in Ward No.31 of Gauhati Municipal Corporation, as described in Schedule-A to the plaint. According to the plaintiff the defendant No.1 is a tenant in occupation of a room on the ground floor which is described in Schedule-B to the plaint. The monthly rent of the premise, according to the plaintiff, was fixed at R.2000/- per month payable within 15 days of the next month. According to the plaintiff the defendants had failed to pay monthly rent of the premises since August, 1999 and, therefore, the defendants are liable to be declared as defaulters and evicted from the suit premises. The further case of the plaintiff, as stated in the plaint, is that her husband is a practising advocate and her daughter is a doctor. Therefore, the premise described in Schedule-B to the plaint, in occupation of the defendants, is required by the plaintiff for use of her husband and daughter in connection with their respective profession.

3. The defendants contested the suit by filing a written statement wherein the allegation of default has been denied. Insofar as bona fide requirement as pleaded by the plaintiff is concerned, according to the defendants the plaintiff is having alternative accommodation in two multistoried RCC house covererd by Holding No.92 and 92A of Ward No.31 and, therefore, the suit premise is not at all required by the plaintiff for use of her husband and daughter, as claimed.

4. On the basis of the pleadings of the parties as many as seven issues were framed for trial in the suit. Issue No.5 which alone would be relevant to the present adjudication may be usefully extracted hereinbelow:-
Whether the suit house is bona fide required by the plaintiff for her bona fide use and occupation ?

5. In the course of trial the plaintiff examined as many as four witnesses in support of her case whereas the defendant examined three witnesses. The learned trial court found the issue with regard to the default against the plaintiff and in favour of the defendant. Insofar as the bona fide requirement is concerned the learned trial court came to the finding that though the plaintiff had examined her husband as PW-3, no witness was examined by the plaintiff to support the pleaded version which is to the effect that the clients of the plaintiff's husband face difficulty in going to his chamber in the second floor. Insofar as requirement of the suit premise by the plaintiff's daughter for opening a chamber is concerned, the learned trial court took the view that as the plaintiff's daughter was a government doctor she had no need for a chamber. Coupled with the aforesaid conclusions the learned trial court also appears to have taken the view that in the present case the bona fide need pleaded by the plaintiff was not her own and, therefore, there was a legal bar for decreeing the plaintiff's suit. Accordingly the learned trial court dismissed the suit. Aggrieved, the plaintiff instituted an appeal against the aforesaid decree of dismissal, which having been allowed, the present revision petition has been filed by the defendant/t

enant.

6. As already noted, the learned trial court had decided the issues with regard to default and bona fide requirement against the plaintiff and in favour of the defendants. While the finding on the issue of default has been affirmed in appeal the finding on bona fide requirement has been reversed. The plaintiff has not instituted any proceeding with regard to the finding on the point of default as altered by the learned lower appellate court. The present revision filed by the defendants is being against the finding of the learned first appellate court on the point of bona fide requirement, it is the correctness of the said finding alone which will require determination by this court in exercise of its powers U/s 115 CPC.

7. Mr DC Mahanta, learned senior counsel for the appellant/defendant has taken me through the findings of the learned trial court with regard to the issue of bona fide requirement as well as the conclusions reached by the learned trial court as to why the case of the plaintiff with regard to bona fide requirement was negatived by the said court. Relying on the same Mr Mahanta has strenuously urged that the plaintiff’s husband already has a chamber in the second floor of the building and that the plaintiff’s case that the said chamber is not suitable as the clients find it difficult to go to the second floor has not been substantiated in any manner by adducing any cogent evidence in support of the said fact. Mr Mahanta, therefore, urged that bona fide requirement on account of the need of the suit premise for setting up a chamber of the plaintiff’s husband has not been established. Insofar as the need of the daughter of the plaintiff is concerned, Mr Mahanta has submitted that it is proved and established by the evidence and materials on record that the plaintiff’s daughter is a government doctor working in the Blood Bank of the Gauhati Medical College and, therefore, not entitled to private practice. Consequently, it is urged, she would not have any need for a chamber of her own. Therefore, according to the learned counsel the bona fide need on account of the plaintiff’s daughter is also not proved by the evidence and materials on record.

8. Mr GM Paul, learned counsel appearing for the opposite party/plaintiff has argued that the conclusions drawn by the learned trial court are mere inferences from the evidence proved and established by the plaintiff. According to the learned counsel such inferences have been incorrectly drawn by the learned trial court from the primary facts and that the said primary facts proved and established in the case does not reasonably permit the said inferences to be made. Consequently, the learned lower appellate court was fully justified in reversing the said finding of the learned trial court. Mr Paul, learned counsel has further submitted that the findings recorded by the learned lower appellate court are findings of facts based on an appreciation of the evidence and materials on record and, therefore, there will be no occasion for this court to cause any interference in the exercise of its revisional jurisdiction with such findings of facts.

9. I have considered the submissions advanced on behalf of the rival parties. It will hardly be necessary for this court to deal at any length with the power conferred on this court by the provisions of Section 115 of the CPC. Ordinarily, in the exercise of the revisional jurisdiction there will be no re-appreciation of the evidence, neither the revisional court will disturb any finding of fact recorded on the basis of the evidence on record so long as the said findings are reasonably possible to be reached on consideration of the materials available on record. In the present case the plaintiff by examining PW-1, an associate of her husband (PW-3), has proved that the second floor chamber of her husband is not suitable for the purpose of the profession. The husband of the petitioner himself appeared as PW-3 and corroborated the said fact. Merely because the plaintiff did not examine any clients to further support the fact pleaded, i.e. that the second floor chamber was not suitable, it does not logically follow

that the plaintiff had not established her case insofar as the requirement of th e husband is concerned. The plaintiff's daughter may be a government doctor but the said fact cannot be understood to be sufficient to dispense with the necessi ty of the plaintiff's daughter for a chamber of her own. The inference from the fact that the plaintiff's daughter was a government doctor and hence she had no need for a chamber of her own, in the considered view of the court, is not the o nly inference that can be reached on the given facts. In such circumstances thi s court is of the view that the learned lower appellate court, as the last court of facts, was perfectly justified in reversing the findings recorded by the lea rned trial court, as noticed above. The learned lower appellate court was also j ustified in taking the view that even if the plaintiff had some other alternativ e accommodation available, such availability, by itself, will not come in the wa y of the bona fide requirement of the plaintiff. After all, it not for the defen dant to point out to the plaintiff as to how alternative accommodation available to the plaintiff should be utilized. The aforesaid conclusion reached by the le arned lower appellate court is on a correct understanding of the several decisio ns of the Apex Court referred to in the impugned appellate judgment.

10. It is virtually a settled position in law that bona fide require ment of the plaintiff will include bona fide requirement of the plaintiff's imm ediate family members. I am, therefore, of the view that the learned lower appel late court was perfectly justified in ignoring the contrary finding of the learn ed trial court while passing the impugned judgment and decree.

11. For the aforesaid reasons I am of the view that there is no meri t in this revision application. It is accordingly dismissed, however, without an y cost. The judgment and decree passed by the learned lower appellate court is h ereby affirmed.